

DOCUMENT RESUME

02278 - [A1332298]

[Government Quarters Not Assigned because of Sex Discrimination]. B-187598. May 6, 1977. 3 pp.

Decision re: Gloria Susan Mitchell; by Paul G. Denbling, General Counsel.

Issue Area: Non-Discrimination and Equal Opportunity Programs: Discrimination in Housing (1006); Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Forest Service.

Authority: Equal Employment Opportunity Act of 1972. Civil Rights Act. 42 U.S.C. 2000e-16(b) (Supp. II). 5 C.F.R. 713.217. 5 C.F.R. 713.219.

George D. Breitweier, Authorized Certifying Officer, Department of Agriculture, requested a decision on certifying a voucher of a seasonal female employee who claimed sex discrimination in the assignment of Government housing. Under broad statutory authority, claim for additional living expenses may be paid if they clearly result from discriminatory housing assignment. (DJM)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20546

FILE: B-187598

DATE: May 6, 1977

MATTER OF: Gloria Susan Mitchell - Government quarters not assigned because of sex discrimination

DIGEST: Seasonal employee of Forest Service claimed sex discrimination in assignment of Government housing. Under broad authority of EEO amendments of 1972 and 5 C.F.R. § 713.271 agency may reimburse employee for additional living expenses if it finds that, but for discriminatory housing assignment, employee would not have incurred such expenses.

This action is in response to a request dated October 6, 1976, from Mr. George L. Breitmeier, an authorized certifying officer of the United States Department of Agriculture, for a decision on the propriety of certifying for payment a voucher submitted by Ms. Gloria Susan Mitchell. She claims reimbursement of living expenses incurred by her while employed by the Forest Service as a Forestry Aid on the reforestation crew at the Packwood Ranger District. The claim stems from a sex discrimination complaint filed by Ms. Mitchell.

Ms. Mitchell was seasonally employed by the Forest Service from June 11, 1973, to November 9, 1973, and from June 17, 1974, to November 22, 1974. During these periods Ms. Mitchell was not assigned Government-furnished quarters because they were reserved for male employees only. By letter dated May 17, 1973, Ms. Mitchell was informed by Mr. William W. Truitt, District Ranger, that she would be expected to arrange her own housing. The letter stated, in pertinent part:

"Housing may be a big problem, as we have only a large 'bull-pen' type of bunkhouse for male members of our crew. There is some housing available in the town, such as cabins, apartments, or motel rooms. It might be possible to share a house or room with another girl as we have offered jobs to other girls, and they will be facing the same housing problem."

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Therefore, Ms. Mitchell arranged for commercial lodging and incurred certain expenses which she would not have incurred had she been able to reside in Government-furnished quarters.

On February 18, 1975, Ms. Mitchell filed a sex discrimination complaint with the Forest Service on the grounds that she was discriminated against on the basis of sex in the assignment of housing while employed at Packwood Ranger District and, as a result, suffered financial loss. Mr. Benjamin L. White was designated as the representative of the Chief, Forest Service, for the purpose of resolving Ms. Mitchell's complaint. On August 5, 1975, Mr. White, an employee relations specialist, found in part that "(d)iscrimination of the assignment of housing on the Packwood Ranger District is substantiated by the OI (Office of Investigation) Investigation Report and by discussions with Gloria Mitchell and William Truitt."

Attached to Mr. White's finding is an informal settlement dated July 23, 1975, wherein Ms. Mitchell agreed to terminate her complaint in exchange for the Forest Service's promise to discontinue the practice of assigning housing according to sex, to recommend inclusion of a specific prohibition against discrimination in the assignment of seasonal housing in the Forest Service Equal Employment Opportunity Plan, and to aid Ms. Mitchell in preparing a claim, to be submitted to this Office, for reimbursement of excess living expenses which she incurred as a result of the discrimination.

In submitting the voucher to us, pursuant to the agreement, the certifying officer asks for our review and determination as to whether the claim is payable. He states that by accepting the informal resolution, the claimant has chosen not to pursue her sex discrimination complaint and claim for monetary damages under the Civil Rights Act of 1964, as amended, but has chosen instead to allow the Comptroller General to make the final determination of whether her claim is payable.

We decline to make a determination on this claim for the following reason. Federal employees were brought under the Civil Rights Act for the first time by the Equal Employment Opportunity Act of 1972 which provides that the Civil Service Commission (CSC) is responsible for the enforcement of the Federal Equal Employment Opportunities Program. 42 U.S.C. § 2000e-16(b) (Supp. II, 1972). Under the Commission's regulations a written allegation of discrimination by a federal employee must be processed under the

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Equal Employment Opportunity regulations and not under other procedures. 5 C.F.R. § 713.219 (1976). Those regulations (part 713 of title 5, Code of Federal Regulations) give each federal agency broad authority to take remedial action in discrimination cases. Therefore, Ms. Mitchell's claim for additional living expenses allegedly incurred by reason of sex discrimination is remanded to the Forest Service for its consideration and determination.

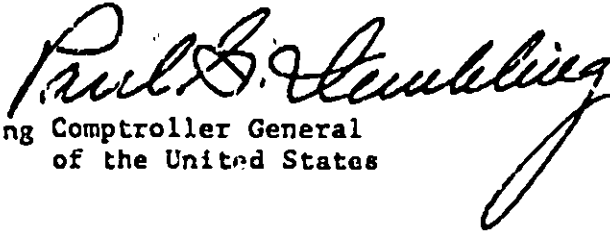
In remanding this case to the agency, we note that the informal agreement was apparently intended to terminate the discrimination complaint. In view of our action in this decision, we suggest that the agency reinstate the complaint for further processing under 5 C.F.R. § 713.217. We point out that 5 C.F.R. § 713.271 provides for remedial action in cases of discrimination, in part, as follows:

"(b) Remedial action involving an employee.
When an agency, or the Commission, finds that an employee of the agency was discriminated against and as a result of that discrimination was denied an employment benefit, or an administrative decision adverse to him was made, the agency shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:

* * * * *

"(5) Full opportunity to participate in the employee benefit denied him (e.g., training, preferential work assignment, overtime scheduling)."

The above-cited regulation gives an agency broad authority to fashion an appropriate remedy for an employee who has been found by the agency to have been discriminated against. In view thereof, it appears to us that it would be proper for the agency to reimburse Ms. Mitchell for her additional living expenses if it finds that, but for the discriminatory housing assignment, she would not have incurred such expenses.


Acting Comptroller General
of the United States